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Supreme Court of the United States

OCTOBER TERM, 1970

No. 1108

CANDIS O. RAY, T/A CANDIS O. RAY AGENCY,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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FEDERAL COMMUNICATIONS COMMISSION and
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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner Candis O. Ray prays that a writ of certiorari issue to review the herein judgment of the United States Court of Appeals for the District of Columbia Circuit entered November 10, 1970, Case No. 24,027 (APP. S p. 64).

OPINIONS BELOW

Appended opinions and rulings of the Federal Agency, the Federal Communications Commission are identified as Appendices A, J, K, L, P, & Q.

JURISDICTION

The jurisdiction of this court is conferred by 28 U. S. C., Sec. 1254(1).

QUESTIONS PRESENTED

1. Whether the Federal Communications Commission's refusal to accord petitioner a hearing in order to clarify conflicting sworn statements concerning the requisite qualifications of its licensee, rendering its decisions on hearsay pleadings and unverified documents, and further refusing to permit petitioner's attorney to present petitioner's complaint to the full Commission by denying petitioner's Application For Review, constitutes violation of due process and the equal protection clauses as provided in the Fifth and Fourteenth Amendments of the Federal Constitution.

2. Whether Rule 13(c) of the General Rules of the United States Court of Appeals For the District of Columbia Circuit, which permits dispensing with opinions, departs from the accepted and usual course of judicial proceedings so as to call for the exercise of the Supreme Court's power of supervision.

CONSTITUTIONAL PROVISIONS INVOLVED

FOURTEENTH AMENDMENT, United States Constitution, as set forth:

> "Section 1 . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law: nor deny any person within its jurisdiction the equal protection of the laws."

FIFTH AMENDMENT, United States Constitution, as set forth:

> ". . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

STATEMENT OF THE CASE

The petitioner is representing herself herein because counsel fees are prohibitive in matching those of the big corporation Jefferson Standard Broadcasting Company (Intervenor in court below) and the Government's, and she thereby respectfully prays indulgence of the Court.

Petitioner was born and raised in Lenoir, North Carolina in close proximity to Charlotte, North Carolina, home of television station WBTV owned and operated by Jefferson Standard Broadcasting Company, a North Carolina corporation with which the herein initial complaint arose.

For many years prior to petitioner's affiliation with station WBTV she had owned and operated a well known successful advertising agency under her name, The Candis O. Ray Agency, specializing in the producing of radio and television shows in Atlanta, Georgia, New York City and Hollywood, California.

Desiring to establish such a specialized advertising agency in her home state of North Carolina for the convenience of some of her agency clients such as Rich's Whip Topping, Bird's Eye Frozen Foods and others petitioner contacted the Station Manager of television station WBTV in May of 1952. Whereupon, as a result of the visit, a specific contract ensued wherein petitioner was to produce television shows over WBTV in the same manner as her agency had negotiated with other larger stations around the country.

After about five months of working together, with both the petitioner and the station complying in every detail to the terms of their contract, *with all of the expenses of readying three television programs the responsibility of the petitioner*, there was a violation of the contract by television station WBTV before the FIRST of the three readied television shows was telecast, depriving petitioner of contracted income.

Since WBTV was a television station monopoly in the two Carolinas at that time, petitioner was forced to close her agency as a result of the breach and the attitude of the station. Because of the huge financial loss, comprising savings and money borrowed from family and friends in the execution of her contractual commitments with Station WBTV, petitioner could not continue to operate her own advertising agency and was forced to seek employment.

Whereupon petitioner came to Washington, D. C. in 1958 and connected with the Alvin Epstein Advertising Agency, as an employee. Petitioner had operated her own recognized advertising agency for many years prior to the breach by WBTV.

On December 8, 1960 petitioner filed a formal Protest of License Grant with the Federal Communications Commission against Jefferson Standard Broadcasting Company (Station WBTV) on "Quentionable Business Practices" and "Character Qualifications" as provided in Section 309(c) of the FCC Act, and as established in petitioner's opening paragraph of said Protest (Found in the original record, SR 1-21).[1]

On January 17, 1961 the Federal Communications Commission wrote to petitioner (SR 286), advising as follows:

> "This is with reference to your letter of December 5, 1960 and the enclosed 'Protest of License Grant' . . . . "accordingly, your 'Protest of License Grant' is being treated by the Commission as a complaint against said licensee."

The Commission withheld license renewal to station WBTV for a period of almost six months awaiting

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[1] Case went up on the original record. However, the court below did not ask for the record be sent up from the Federal Communications Commission where it is currently filed.

WBTV's answer to petitioner's charges, and granting extentions of time to WBTV in which to file its answer.

The Commission refused petitioner the right to see Licensee WBTV's answer to her charges, which answer was filed by WBTV on March 9, 1961 *without petitioner's knowledge*. Neither the Commission nor the licensee WBTV notified petitioner of the filing, although petitioner had specifically requested an opportunity to review the answer in her letters to the Commission dated January 19, 1961 (SR 287) in which it is reiterated that the charge is "Questionable Business Practices" and *not* the breach of contract matter, and in her letter dated April 22, 1961 (SR 288-289) written to the Commission *during* its consideration of the filed WBTV answer, kept secret from petitioner, the following request is made by petitioner:

> "I should be entitled to know, and ask to know the context of the complained-of licensee's answer to my complaint in the form of a License Grant Protest, copy which I understand was sent to the licensee for answer."

On May 17, 1961 the Commission suddenly granted license renewal to WBTV *without* granting petitioner's request to review WBTV's answer, *and without notifying petitioner that the answer had been filed, and was under consideration* the Commission wrote a letter notice of license renewal to petitioner on above date of license issuance (APP. A p. 25 (SR 147)), blocking petitioner from opportunity to reply to the WBTV answer.

Errors in Commission's ruling in issuance of WBTV license renewal on above date of May 17, 1961:

1. That petitioner's complaint (Protest) is based on the contract matter with WBTV, referring to a "private controversy" and ignoring the true charge in petitioner's complaint of misrepresentation of the facts by the licensee WBTV to the Commission.

2. By accepting the hearsay sworn statements (affidavits) of officers of WBTV, speaking for those WBTV personnel named in petitioner's Protest, and permitting licensee WBTV to evade answering specific charges and to withhold evidence from the Commission.

3. By ignoring the extrinsic affidavits attached to petitioner's Protest regarding misrepresentation of licensee WBTV to two North Carolina housewives whose names WBTV had chosen from the telephone book and promised prizes for audience participation on petitioner's first television show, and who were never later contacted by WBTV, after the breach with petitioner, and given any reason why they would not receive the promised prizes—a further embarrassment and aggrievment to petitioner, and a misrepresentation to the public by WBTV unbefitting qualified character requisites of a broadcast licensee.

4. The Commission miscontrues petitioner's charge in Protest. Petitioner did not urge the Commission to rule on the contract matter, nor to define a contract. Petitioner was well aware and had so advised the Commission of her knowledge that the Commission has no jurisdiction over contract matters and private controversies. And although petitioner included the background history of the case in the North Carolina courts wherein it is revealed by court records and affidavit filings by two North carolina attorneys (APP. B p. 27 (SR 291)) that she was denied due process in the North Carolina courts, she did not ask that the Commission rule on those actions in her filed Protest. Further, it is not likely that the Commission would have withheld license renewal to WBTV for a six months' period on a non-jurisdictional complaint charge of a contract breach, or a private controversy.

On May 18, 1961, the date petitioner received the Commission's above notice of license renewal to WBTV,

petitioner wrote the Commission requesting to see licensee WBTV's answer to her charges (APP. C p. 29).

The Commission refused petitioner access to WBTV's answer when contacted on the phone by stating that the referred to answer could not be located. Her above letter request of May 18, 1961 was ignored by the Commission forcing petitioner to employ an attorney to compel the Commission to make available WBTV's answer in the Public Reference Room of the Federal Communications Commission so that she might review same. Whereupon, as a result of the contact made by a Washington, D. C. attorney the Commission then answered petitioner's above mentioned letter (APP. D p. 31 (SR 290)).

On July 15, 1961 petitioner, having reviewed WBTV's answer in the Public Reference Room of the FCC, filed her reply with the Commission by attaching a copy of the itemized false statements sworn in affidavits filed by licensee WBTV. Petitioner's reply states in part (APP. E p. 32 (SR 147A-147E)):

> "I am attaching herewith a copy of the itemized false statements sworn under oath and filed with its answer on March 9, 1961 by Licensee WBTV in a deceptive move to effect renewal of its license."

The Commission ignored above filing by petitioner.

Petitioner requested of the Commission to know why her above filing was ignored, and was wrongly advised by the Commission that;

1) it did not have the powers to act on the new evidence filed, and

2) that petitioner would have to wait another three year period when licensee WBTV would again file an application for renewal of its license.

Petitioner was advised by several Washington attorneys with knowledge of the FCC rules and regulations that it would be useless for petitioner to file a complaint

again in 1963—the end of the the three year period when WBTV would file an application for renewal—since the Commission was evidently blocking petitioner from the requested hearing, arbitrarily and capriciously ignoring filed evidence, and refusing to investigate the conflicting and contradictory sworn statements already filed with the FCC in this matter. Therefore petitioner did not file a complaint in 1963, because of lack of necessary funds at that time to carry through to an appeal.

However, in 1964 petitioner received new evidence of misrepresentation from one of the key witnesses in this case, Mr. Samuel Zurich, a WBTV employee with whom petitioner had had the direct dealings, wrote to petitioner on date January 2, 1964 (APP. F p. 33 (R 123-178, Attach 10)):

> "When you phoned me about a year ago I told you I had made a complete accounting of this case, as I experienced it, immediately after it happened. I did this as an employee of WBTV and my statement is currently filed with them. It is accurate and will certainly refresh my memory if required. I am sure you will understand, therefore, why it is impractical for me to supplement that statement at this time."

Licensee WBTV had filed sworn statements by its officers with the Federal Communications Commission stating that WBTV took no statements from any of its employees in the referred-to conference in the station "Manager's Office" re this complaint (R 251-274, filed July 13, 1967), and further filed another affidavit by the same station manager dated July 31, 1967 stating that "no notes" were taken on what Zurich said in that referred-to conference (R 300-302, filed August 2, 1967).

Petitioner submitted the above noted letter from Mr. Zurich to the Commission with two additional letters which he had written to petitioner verifying his strong statements and affirmations that he had given a statement to WBTV re this complaint matter (APP. G p. 34

and APP. H p. 35 (R 123-178, Attachments as identified)).

Following the advice of the Commission, petitioner waited the time period, and filed complaint anew, citing the new and added evidence on date of September 9, 1966 (SR 188-205), after WBTV filed renewal application.

On December 9, 1966 the Commission wrote to Mr. Zurich requesting that he comply with an affidavit to the Commission concerning his statements on the telephone to the FCC Broadcast Chief, Mr. Robert Rawson, on November 30, 1966 re his written letters to petitioner (APP. I p. 36 (R 123-178, Attachment 12)).

Zurich refused to send the requested affidavit to the FCC but instead wrote a letter in lieu thereof dated December 14, 1966 wherein he states (R 123-178, Attachment 1A):

> "Following Miss Ray's visit to see me in New York in January of 1964, I called Mr. Jorgenson, then manager of station WBTV, and advised him of Miss Ray's interest in seeing the statement which I had made in Mr. Crutchfield's office. Mr. Jorgenson advised me that the station would provide Miss Ray no information whatsoever regarding this case without her going through proper channels.
>
> Mr. Jorgenson and I reviewed, on the phone the part of that meeting in Mr. Crutchfield's office which related to my involvement in this case. Mr. Jorgenson confirmed to me that I had absolutely no involvement in the negotiation of this program with Miss Ray. *He agreed that my statement had no reference to a contract.* When Miss Ray called me and asked if I had obtained the statement she requested, I told her of the above conversation with Mr. Jorgenson."

The Commission did not further request that the above be put into affidavit from Mr. Zurich, nor enforce its prior demand that Mr. Zurich submit an affidavit.

The "reviewing" of the case on the telephone between Mr. Zurich and Mr. Jorgenson was *twelve years* after the incident. It should be noted that station WBTV had filed sworn statements with the FCC that "no notes" were even taken on what Zurich said in the referred to conference in Mr. Crutchfield's office when all WBTV personnel were called to give an account of his personal experience in the dealings with petitioner.

The above referred to Mr. Jorgenson with whom Mr. Zurich "reviewed" on the phone his "statement" IS the WBTV staff member with whom petitioner had the direct dealings in the contract matter, and whose affidavit WBTV has refused to submit to the FCC regarding that matter, but submitting instead affidavits of the officers of WBTV to speak for those WBTV personnel with whom petitioner had the direct dealings. Petitioner's dealings with Mr. Zurich dealt with programming and not the contract matter, as Mr. Zurich was in WBTV's Program Department and not authorized to negotiate into contract. Petitioner's complaint herein is not based on the contract —whether or not a contract ever existed is not the issue here—the charge issue is MISREPRESENTATIONS by the licensee WBTV to the Commission, and the Commission's permitting same.

The Commission permitted licensee WBTV to evade answering specific charges in petitioner's complaint, and ruled on the hearsay affidavits of the officers of WBTV and granted license renewal to WBTV on January 26, 1967 by letter notice ruling to petitioner (APP. J p. 40 (R. 122A-F)) wherein the FCC continues, revealing capricious and arbitrary, to rule on the contract matter (See page 7, para. 1, ending):

> ". . . , it (complaint) would only bear on whether a contract existed and not on the issue of alleged misrepresentation."

Petitioner was thus forced to employ legal counsel, at a great burden of expense she could ill afford. And on

February 3, 1967 she entered into a contractual agreement with the Washington, D. C. law firm, Molnar and Gammon, specializing in the communications field, to represent her in appealing the FCC staff level rulings of the Broadcast Chief, which letter contract from the law firm to petitioner reads in part:

> "Frankly it does seem to us that your years of effort in seeking redress for what you consider a wrong should at some point be fully and formally presented for final action by the Commissioners themselves."

On February 27, 1967 the law firm Molnar and Gammon filed a Petition For Rehearing and Reconsideration (R 123-178) with the Commission appealing on review the Broadcast Chief's letter renewal ruling dated January 26, 1967. However, the law firm was blocked from fulfilling its contractual commitments with petitioner in offering consideration of the "Commissioners themselves", evidenced by the subsequent Order released by the Commission dated October 27, 1967, denying to review the Broadcast Chief's ruling, stating (See APP. K p. 48 (R 304)):

> "1. The Commission has before it an application filed on June 26, 1967 by Candis O. Ray requesting a review of the actions taken by the Chief of the Broadcast Bureau on January 26, 1967 which granted the above-entitled application and on May 23, 1967 which denied Miss Ray's petition requesting reconsideration of that grant.
>
> 2. IT IS ORDERED, That, the Application For Review IS DENIED."

The above Commission ruling is in response to petitioner's formal APPLICATION FOR REVIEW filed with the Commission on June 26, 1967 by counsel stated above, which delegation of authority by the Commission is in violation of Section 155(d), (1), (4), Title 47 U. S. C. A.

Attention is directed to the Commission's reference in above Order to the Broadcast Chief's ruling of May 23,

1967, wherein the following errors are revealed (APP. L. p. 49 (R 230)):

1. The Broadcast Chief rules again on the contract matter.

2. The Broacast Chief states erroneously that "careful consideration" (paragraph 7) has been given to the filed extrinsic conflicting and contradictory sworn statements, displaying capricious and arbitrary, prejudicing petitioner further by confining the disputed sworn statements to the Zurich matter, brushing aside the other affidavits and misrepresentations adduced.

3. The Broadcast Chief is knowledgeable to petitioner's entitled standing under Section 405, U. S. C., and further prejudices petitioner by his statement (para. 2).

Petitioner's counsel submitted the following to the Commission in filed Application For Rehearing on February 27, 1967 (R 123-178):

"BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

BRCT-55

[Filed Feb. 27, 1967]

In the Matter of Application of:

JEFFERSON STANDARD BROADCASTING
COMPANY (WBTV)
Charlotte, North Carolina

For Renewal of License

To: The Commission

PETITION FOR REHEARING
AND RECONSIDERATION

Now comes Candis O. Ray, individually and as the Candis O. Ray Agency, a sole proprietorship

(hereinafter referred to as Petitioner or Miss Ray) and, by her attorneys, files the above-captioned petition. In support whereof, it is respectfully shown and stated as follows:

I. *Actions Complained of*

In essence, the thrust of this petition is directed against:

A. The Commission's Notice of January 27, 1967, stating that the license of Jefferson Standard Broadcasting Company to operate television broadcast station WBTV, Charlotte, North Carolina (herein licensee of WBTV), had been renewed (Public Notice—B, 95309).

B. The letter addressed to Miss Ray under date of January 26, 1967 (Reference 8422) informing that Miss Ray's complaint of September 9, 1966, and subsequent pertinent letters had, in effect, been rejected and the WBTV license renewed.

For reasons hereinafter given and supported, the aforesaid Commission actions overlooked or disregarded relevant and material public interest factors, were arbitrary, capricious and contrary to the public interest, convenience and necessity. Substantial and material questions (and conflicts) of fact require that a public hearing be held at which all parties in interest be entitled to participate.[1]

II. *Petitioner Has Requisite Standing To Petition Here And To Seek Later Court Review If Necessary*

Petitioner has standing before the Commission to contest the renewal of WBTV's license and ask for rehearing and reconsideration.

A. 47 U.S.C. § 405 gives standing to any "person aggrieved or whose interests are adversely affected"

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[1] *Cf.* 47 U.S.C. § 309(d)(2), 309(e), the Communications Act of 1934, as amended."

> by an order, decision, report, or action taken by the Commission or its designated authority. Petitioner has been aggrieved by WBTV's misrepresentations to the Commission regarding licensee's business relations with Petitioner. Such misrepresentations have also held Petitioner up to scorn—a further aggrievment."

The Commission's failure to schedule a hearing in 1961 when the complaint and conflicting sworn statements were first filed has prolonged agency "administrative finality" in this matter.

The Commission has deliberately strung the case out —by wrongly advising petitioner that; 1) the Commission did not have the powers to act on the new evidence filed, and 2) that petitioner would have to wait another three years when licensee WBTV would again file its application.

The Commission released a Public Notice in this complaint matter dated October 25, 1967 stating that (APP. M p. 52 (Last line) (SR 252)):

> "Her request is based on a breach of contract dispute with WBTV. (By Order.)"

Thereafter, *after* the FCC alleged final Order dated October 25, 1967, as adopted (APP. K p. 48 (R 304)), the Commission released another "By Order" Public Notice in this same complaint matter citing a different basis for consideration of its ruling (See APP. N p. 53 (Last Sentence) (SR 251)):

> "Her request is grounded on her allegations that the licensee, in response to her earlier complaints in connection with an alleged 1952 breach of contract, made misrepresentations and withheld from the Commission certain relevant material. (By Order.)"

Petitioner filed new evidence with the Commission in this complaint matter on February 12, 1968 identified as affidavit and letter request for action by the Commis-

sion re same (APP. O p. 54 (SR 231-233)). The Commission did not answer the letter nor comply with petitioner's request. Mr. Zurich reported to petitioner that no one at the Commission had contacted him in regard to the above affidavit and letter. All of petitioner's subsequent correspondences to the Commission re the matter were ignored. In a conference by petitioner and counsel in the FCC's General Counsel Henry Geller's office recently Mr. Geller had advised that the Commission had contacted Mr. Zurich re the February 12, 1968 letter-affidavit request. Mr. Geller also reported that the Commission had been letting the Broadcast Chief handle this complaint, and that he would not be excluded unless a hearing was called.

Petitioner being in a better financial position to devote the necessary time to appeal the FCC ruling, if necessary, to the United States Court of Appeals for the District fo Columbia Circuit—after waiting the time period advised by the Commission—on November 24, 1969 filed her complaint anew (R 480-482) which resulted in FCC's letter notice of license renewal dated December 4, 1969 (APP. P p. 59 (R 484)).

On December 19, 1969 petitioner filed an "Application For Review" (R 486-505). Licensee WBTV filed "Opposition to Application For Review" on December 31, 1969 (R 506-519).

On February 16, 1970 the Commission issued a Memorandum Opinion and Order ruling in which the following errors appear (APP. Q p. 61 (R 527)):

1. The FCC records disclose that petitioner's complaint was filed December 19, 1969, not December 22, 1969.
2. The FCC has not considered petitioner's complaint "for the past four renewal periods".
3. This complaint matter before the Commission has not been for "two decades". It was first filed with

the Commission on December 8, 1960, at which time the requested hearing should have been held, dispensing with duties of administrative finality.

4. Ignoring evidence adduced, including extrinsic affidavits of conflicting and contradictory statements is not "careful consideration" by the Commission.

5. The 1967 FCC Order is NOT "final order" as the FCC acted seasonably on the timely filings by petitioner and the oppositions thereto by licensee WBTV in the 1969 filings in this complaint matter.

On March 17, 1970 petitioner filed an appeal in the United States Court of Appeals For the District of Columbia Circuit (APP. R p. 63). The case came on to be heard November 6, 1970, with judgment (APP. S p. 64), denying petitioner and affirming the Federal Communications Commission's ruling, and the within appeal ensued.

REASON FOR GRANTING THE WRIT

A GOVERNMENT AGENCY PERMITTED TO ILLEGALLY TAKE PRECEDENCE OVER AND WILFULLY USURP ITS DUTIES AS DELEGATED BY THE CONGRESS IS IN VIOLATION OF CITIZEN'S RIGHTS ESTABLISHED BY THE FIFTH AND FOURTEENTH AMENDMENTS OF THE FEDERAL CONSTITUTION WHICH PRACTICE IF ALLOWED TO CONTINUE JEOPARDIZES THE COMMUNITY IT SERVES AND THE INTEREST OF THE WHOLE PEOPLE.

The Constitution's structure balance resorts to and is based upon the fundamental rights of the individual. If a citizen is denied and a large corporate entity privileged to the laws of our land then all citizens should be denied that privilege, and the Constitution abolished in its entirety.

The necessity of plenary consideration herein rests on the departure from the usual course of judicial proceedings so as to call for this Court's power of supervision.

The judgment of the court below upon which the within application for review is based was issued November 10, 1970 (APP. S p. 64) citing the following:

> "While the issues presented occasion no need for opinion, they have been accorded full consideration by the Court. *See* local Rule 13(c)."

The petitioner submits below the referred to "issues presented" as set forth in her brief, and as argued:

"ISSUES PRESENTED

1. Did the FCC properly exercise its authority by ruling on the hearsay affidavits from officers of licensee WBTV speaking for those WBTV staff employees with whom appellant had direct dealings, and refusing to obtain affidavits from those named WBTV personnel with whom appellant had the direct dealings in the FCC ruling of 1961?
2. Did the FCC abuse its discretion in permitting licensee WBTV to evade answering specific charges in the original and subsequent complaint filings, and by granting license renewal in the original complaint filed by appellant without either, the FCC or licensee, notifying applicant of licensee WBTV's answer, and denying appellant a chance to reply to same?
3. Did the FCC rule properly and just in granting license renewal disregarding the contradictory affidavits and conflicting sworn statements on file concerning the material issues and the heart of the matter without calling a hearing to examine the available evidence offered?
4. Did the FCC err in delegating authority back down to the same staff level whose rulings appellant was appealing on review?"

Responding Statement of Questions presented by the FCC:

"1. Did the Commission err in concluding that appellant Ray's complaint filed in 1969 had been previously resolved in a Commission order which became final in 1967 so that both the need for administrative finality and 47 U.S.C. 405 precluded further consideration of the matter.

2. Assuming the Commission's 1967 determination is properly before the Court, could the Commission reasonably find that appellant's complaint did not warrant an evidentiary hearing under section 309 (d) of the Communications Act."

In regard to the above, the petitioner submits the following:

1. The FCC cites its own rules governing "administrative finality" and delegation of authority by referring to Title 47 U.S.C. 405, disregarding petitioner's cause for relief filed under Section 155 (d), (1), (4), Title 47, U. S. C. which does not permit this delegation (See APP. R p. 63)

   Section 155 (d), (1), (4), Title 47 U.S.C.A. states as follows:

   "(d) (1) When necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may, by published rule or by order, delegate any of its functions (except functions granted to the Commission by this paragraph and by paragraph (4) . . . ."

   "(4) Any person aggrieved by any such order, decision, report or action may file an application for review by the Commission within such time and such manner as the Commission shall prescribe, and every such application shall be passed upon by the Commission. The Commission, on its own initiative, may

review in whole or in part, at such time and in such manner as it shall determine, any order, decision, report or action made or taken pursuant to any delegation under paragraph (1) of this subsection."

2. The FCC refers to "section 309(d) of the Communications Act" which deals with timely filings, asserting that the FCC ruling in 1967 became final order.

> Petitioner had established in court below that the referred to FCC rulings in 1967 were *not* "final order", *as the FCC acted timely on the seasonal filings of petitioner and the oppositions thereto by licensee WBTV filed in 1969 in this complaint matter* (Page 2-A, Appellant's Brief).'

Although the judgment of the court below (APP. S p. 64) states "This cause came on to be heard on the record from the Federal Communications Commission, and was argued by counsel" the record was not requested by the court and is still with the Federal Communications Commission. Petitioner appeared in proper person, without counsel.

The court's reference to Local Rule 13(c) deals with the General Rules of the U. S. Court of Appeals For the District of Columbia Circuit dispensing with the necessity of rendering opinions. However, Rule 13(c) refers thus: "' Report of the President's Commission on Crime in the District of Columbia (1966) p. 308".

The continued enlargements of time requests by the respondents in which to file answers and briefs has unnecessarily lengthened the time involvement in this complaint matter.

Station WBTV is no longer a licensed television station monopoly in the designated area. There are a number of television stations in the area, serving the convenience and necessity of the people.

The following statements in filings by petitioner's attorney were ignored by the Commission:

From Petition For Rehearing and Reconsideration filed February 27, 1967 (R 123-178 p. 7):

> "The Commission-directed letter of January 26, 1967 not only shows the success of WBTV's misrepresentations, but in fact *goes farther than even WBTV dared venture in whitewashing itself.*"

NOTE: It was later revealed by Commission Order released October 27, 1967 that the referred to letter ruling of January 26, 1967 was not "Commission-directed" (See APP. K p. 48).

Concerning the above staff ruling in renewal letter notice of January 26, 1967, petitioner's counsel states the following in his subsequent Application For Review filed June 26, 1967 (R 232-248 p. 9):

> "The January, 1967, letter of the Broadcast Bureau, then, dealt *solely* with Applicant's charges against WBTV on the question of whether it indeed had possession of "statements" bearing on the subject matter at the time it represented to the Commission that "full information" had been submitted. But at this point the Bureau brushed aside the charges (p. 4, para. 2)" (pages 5 & 6 herein) "*by employing subjective guesses not even indulged in by WBTV.* We cite to Bureau's language: "Zurich . . . *obviously assumed*" * * * "*Presumably*, Mr. Miller (WBTV local attorney) . . . *Apparently* he did not believe. . . ." And in the very next paragraph: "Zurich . . . *obviously believed.*" (Emphasis supplied). These, of course, are the questions for an adjudicatory hearing with right of cross-examination.
>
> Then, begging the central question, the Bureau concluded that even if Zurich did make a statement to WBTV important to this matter it "would only bear on whether a contract existed and not on the

issue of alleged misrepresentation" (page 5, para. 1)." (page 7 herein) "Such reasoning is neither a proper nor a fair exercise of quasi-judicial agency judgment."

Counsel for petitioner further states (p. 7-9) in above Application For Review:

"Thereafter, upon filing of Applicant's formal Petition For Rehearing And Reconsideration, the Bureau, purporting to act under Rule 1.106(a), took jurisdiction over the Petition For Rehearing And Reconsideration and summarily denied it. The facts immediately show the Bureau's errors.

The substantial and material questions of fact[14] were not treated at all by the Bureau because they were said to underlay a possible "contract" which the Bureau states is a private matter of no concern to the Commission.[15] Such an assertion, however, when carried to its logical conclusion would strip the Commission of authority which at times, as here, is vital in assuring that its licensees possess the requisite qualifications.

Petitioner is not asking the Commission to resolve any question about the Commission's jurisdiction over the contract. But the transaction and the representations to the Commission concerning the contract are certainly of Commission concern and properly so. For the subject matter of the deceit is no bar to the Commission, whether it be a breached contract, false affidavits, a perjury indictment, or whatever. The *fact that there has been deceit* to the Commission and its bearing upon the fitness of WBTV to continue as a Commission licensee are all-important in the public interest. In *Community Radio of Saratoga Springs, New York, Inc.* (3 RR

[14] Cf. Section 309(d) of the Communciations Act of 1934, as amended (Act).

[15] January, 1967 letter, page 1; Memorandum Opinion and Order of May 25, 1967.

2d 644 at 646), the Commission stated, ". . . the fact that these allegations may also be pertinent in private litigation does not diminish the need to resolve the question of Community Radio's qualifications."

Petitioner's counsel Gammon states further, pages 11 and 12, in above filed Application For Review:

"It is manifest that Rule 1.106(a)[16] may apply well on reconsideration petitions going to the Presiding Officer or Review Board; when it is employed by the Broadcast Bureau or a single individual, however, as is the case here, it deprives interested parties of fundamental rights to impartial determinations. For it is fundamental that the power to rehear and reconsider as envisioned by the Congress and the Commission necessarily is intended to assure that the body exercising that power is authorized to grant relief on whichever side of the controversy the public interest lies.

Here, no such authority exists. The pre-delegated authority of the Bureau is limited only to affirmance of its *own action* in favor of WBTV; it had no authority whatever to designate the WBTV *renewal* for evidentiary hearing and make Applicant a party as requested by Applicant.[17]

Upon receipt of the Petition For Rehearing And reconsideration, the Bureau had the power to either send it to the Commission (to whom it was addressed) or act upon it itself. But at the very moment the Bureau, with its pre-established limitations of authority, decided to act upon the Petition, it foreclosed the possibility of impartial consideration.

---

[16] "Petitions requesting reconsideration of a final action taken pursuant to delegated authority will be acted upon by the delegated authority. * * *" Rule 1.106(a).

[17] Rule 0.281(b) delegates authority to the Broadcast Bureau Chief, in pertinent part, to designate for hearing only "mutually exclusive" applications for new or modified facilities.

> Without the authority to grant relief on either side of the matter, and thus *ipso facto* foreclosed from acting affirmatively for Applicant here, the Bureau *could not* reach the merits of the Petition. Thus, both WBTV and the Bureau have avoided treating of the substantial and material questions of fact running to WBTV's conduct before the Commission; the former by choice, the latter by necessity. Only grant of this application and review on the merits can provide procedural due process of law here."

Counsel continues (R 123-178, p. 7):

> "The past WBTV evasions, taken with Zurich's changed story after contact with WBTV, make it manifest that the only road to truth here is through cross-examination at hearing. Petitioner may represent only a small part of the overall public interest, convenience and necessity, but it is that part which believes the custodians of our airwaves should not count in their number those who beat down small people with untruths to the licensing agency."

Petitioner is a person aggrieved, and has standing under 47 U. S. C. 405, as established. The area in question is the home of petitioner with roots dating back to the early first family settlers. Her current family and business investments are in the area. She has suffered great damage and oppressions by deprivations disclosed herein.

CONCLUSION

For the reasons stated above, certiorari should be granted.

Respectfully submitted,

CANDIS O. RAY
Pro se
2700 Connecticut Avenue, N.W.
Washington, D. C. 20008

December 15, 1970

APPENDICES

APPENDIX A

(SR 146-147)

FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

May 17, 1961

In reply refer to:
8421

Miss Candis O. Ray
1500 Massachusetts Avenue, N. W.
Washington 5, D. C.

Dear Madam:

This is with reference to (1) the applications (BR-458 & BRCT-55) of Jefferson Standard Broadcasting Company for renewal of licenses of Stations WBT and WBTV, Charlotte, North Carolina; (2) your letter and enclosures filed on December 8, 1960 objecting to the grant of the above-entitled applications; (3) the reply of the licensee filed on March 9, 1961; and (4) other letters, affidavits and materials filed in the matter by the principals.

In substance, your letter urges that the licensee's failure to honor an alleged contract with you involving the production of certain television shows is a willful breach of contract and reflects adversely on the character of the licensee; that in legal suits brought against the licensee in the North Carolina courts, you did not prevail because of alleged collusion between the attorneys involved including your own counsel, alleged improper influence on the part of the licensee's North Carolina counsel and alleged corruption in the North Carolina courts. In addition, you alleged that you were denied due process because you were not given a jury trial. The reply filed by counsel for the licensee disputes the above contentions and the affidavits submitted by the licensee categorically deny the allegations.

The Commission has consistently taken the position that, with respect to private controversies, such as is referred to above, it will not attempt to resolve the issues therein but will leave their resolution to the appropriate courts pursuant to local law. In this connection, it appears that your claims have been litigated in the courts of North Carolina and have been adjudicated in favor of the licensee.

In light of the above, and upon a finding that the public interest will be served thereby, the Commission on May 17, 1961 denied your request for a hearing and granted the above applications for renewal of licenses of Stations WBT and WBTV. In accordance with your request, the newspaper clippings which you submitted to the Commission are returned herewith.

BY DIRECTION OF THE
COMMISSION

Ben F. Waple
Acting Secretary

Enclosure

cc: Kirkland, Ellis, Hodson,
Chaffetz and Masters

APPENDIX B

(SR 291)

CANDIS O. RAY AGENCY—Radio/TV & Pub. Rel.
1500 Massachusetts Avenue, N. W.
Washington 5, D. C.

June 3, 1961

F.C.C.:

I have read and examined the Answer the licensee WBT & WBTV of Charlotte, N. C. has made to my Complaint before the Commission in the Public Reference Room of the Commission by permission given me by letter to do so, for which I thank the Commission.

I must ask that the Commission review the case because of false statements sworn to under oath by the licensee's legal counsel and others submitting affidavits in the Answer, and offer herewith and attached the personal affidavits of the two attorneys who handled both cases—the WBTV suit and the Travis-Furniture-Forged Note Case, and who represented me in both cases: Mr. Joseph Evans, attorney representing me in the Jefferson Standard Broadcasting Company (WBTV) case and a member of the law firm, Thomas & Evans of Hickory, North Carolina, Affiant "A", and Mr. L. H. Wall, the attorney representing me in the Travis-Furniture Case, of Lenoir, North Carolina, Affiant "B" who point out in their sworn statements of facts and of court actions that I was as their client deprived and denied my legal rights in these two cases, which are connected in that the office furniture which I had bought and paid for on direction and authority of the licensee WBTV's General Manager in order to open up office in Charlotte to fullfill my contractual agreement with the licensee was illegally seized and sold by a Federal Government Official who did not have a court order to sell the property, and *before* a court

judgment was given to him to sell the property (See Affiant "B". Also EXHIBIT "D" which the licensee has submitted to the Commission in their Answer.), and the WBTV counsel made this particular office furniture a part of the court record by including it in his cross examination of me in the first suit against WBTV in Mecklenburg County when he asked me about the furniture and inquired "And where is that furniture now?" The furniture had been confiscated and illegally sold, and AFTER the sale there was a trial held in Charlotte Superior Court (See Affiant "B") and I was not made a party to the trial or the suit, and knew nothing about it. I answered him by saying it was in litigation. His response was a giggle. It was confusing to me at that time (January 27, 1955) because I did not know that there had been a trial in January in the Superior Court of Mecklenburg County on the furniture, and this *action* after Travis had already sold my furniture. I attach herewith Exhibit "A" which itemizes the furniture in question and made a part of the licensee WBTV's suit and clearly discussed in the testimony I gave under cross examination by the counsel for the licensee, which testimony has been concealed from me and my attorneys by the counsel of the licensee. (See attached Affiant "A", my attorney handling this case at the time.)

/s/ Candis O. Ray

APPENDIX C

May 18, 1961

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington 25, D. C. Re: 8421

Dear Mr. Waple:

I have received your letter of May 17 concerning the license renewal for Stations WBT & WBTV of Charlotte, North Carolina.

You state in the second paragraph that the counsel for the licensee WBT & WBTV have denied my charges and submitted affidavits for proof. I think it grossly unfair of the Commission not to accept my offered sworn statement to the truth of my charges, and further evidence to support my charges, which I offered in my letter to the Commission on the date of April 22, 1961.

I have offered and continue to offer proof of each charge, serious though they are, contained in my complaint before the Commission. I have offered also sworn statements and evidence to support my charges. Why is it that the Commission will not accept my affidavits and will accept as the truth the affidavits from the licensee? Is the Commission accepting as truth the denial by the licensee without seeing my evidence of my charges or hearing them and without accepting my sworn statements to my charges?

Also, thus far, I have not been allowed to see the Answer the licensee WBT & WBTV made to my complaint, yet the Commission asked me by letter correspondence if it could send a copy of my complaint to the licensee. I permitted this. I think it unfair that I do not have the opportunity to see the Answer or know what it contained, for certainly it must have contained sworn statements and denials to definite charges I've made which I have

evidence to prove, but have not been given a hearing to prove these serious charges.

I will file for a petition for reconsideration by the Commission, and will employ an attorney so that the petition will be prepared properly, adding new evidence with affidavits.

I will appreciate it if the Commission will return to me my file on this case, along with the large cardboard Exhibits which are originals and could not be easily copied, so that my attorney can study the case. I would also like to have a copy of the Answer the licensee WBT & WBTV sent the Commission in response to my complaint which the Commission asked if it could send to the licensee.

Sincerely,

/s/ Candis O. Ray
CANDIS O. RAY AGENCY

COR:rl

APPENDIX D

(SR 290)

FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

May 26, 1961

Address All Communications
to the Secretary
In Reply Refer to:

8421
500645

Miss Candis O. Ray
1500 Massachusetts Avenue, N. W.
Washington 5, D. C.

Dear Madam:

This is with reference to your letter of May 18, 1961 in which you request the return of certain material filed by you in connection with your complaint against Jefferson Standard Broadcasting Company, licensee of Stations WBT and WBTV, Charlotte, North Carolina. You also request a copy of the answer filed by the licensee in this matter.

We regret that we are unable to furnish you with a copy of the material filed by Jefferson Standard Broadcasting Company. However, this material is available for public inspection in the Public Reference room of the Commission, located on the seventh floor of the New Post Office Building. In accordance with your request, the documents described on the attached list are returned herewith.

Very truly yours,

/s/ Ben F. Waple
Ben F. Waple
Acting Secretary

Enclosures

APPENDIX E

(SR 147A-147E)

July 15, 1961

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington, D. C.

Re: Licensee WBTV,
Charlotte, N. C.

Dear Mr. Waple:

Although the Commission did not advise me of the answer which licensee WBTV filed with reference to the herein complaint matter and my protest of license grant, and having granted the license renewal without notifying me, the complainant, I have nevertheless reviewed WBTV's answer filed March 9, 1961, after being forced to employ a lawyer to compel the F.C.C. to allow me to read the answer in the public reference room, and to make available to me the same.

I am attaching herewith a copy of the itemized false statements sworn under oath and filed with its answer on March 9, 1961 by licensee WBTV in a deceptive move to effect renewal of its license.

Respectfully,

/s/ CANDIS O. RAY

APPENDIX F

(R 123-178)

(Attach. 10)

Philadelphia • New York • Chicago • Detroit
Boston • San Francisco • Hollywood • Honolulu

N. W. AYER & SON INC.

Rockefeller Center, 1271 Avenue of the Americas, New York City 20
Telephone Area Code 212, PLaza 7-5700

Miss Candis O. Ray
Candis O. Ray Agency
1500 Massachusetts Avenue, N.W.
Washington 5, D. C.

January 2, 1964

Dear Candis:

Your letter of December 28 leaves me with the impression that you are unsure of my integrity. I assure you that I can be trusted to account for the details surrounding your experience with WBTV in 1952 truthfully, should I be required to do so.

When you phoned me about a year ago I told you I had made a complete accounting of this case, as I experienced it, immediately after it happened. I did this as an employee of WBTV and my statement is currently filed with them. It is accurate and will certainly serve to refresh my memory if required. I am sure you will understand, therefore, why it is impractical for me to supplement that statement at this time.

I am glad to know of your success in Washington. It sounds like you're having fun. Continued good luck in the year ahead.

Cordially,

/s/ Sam
Samuel C. Zurich

hk

APPENDIX G

(R 123-178)

(Attach. 9)

Philadelphia • New York • Chicago • Detroit
Boston • San Francisco • Hollywood • Honolulu

N. W. AYER & SON INC.

Rockefeller Center, 1271 Avenue of the Americas, at 50th Street
New York City 20, PLaza 7-5700

Miss Candis O. Ray
Candis O. Ray Agency
1500 Massachusetts Avenue, N.W.
Washington 5, D. C.

January 3, 1962

Dear Candis:

I get the impression from reading your letter that you are both successful and contented with your work in Washington. You are located in one of my favorite cities in the country.

There are two basic reasons why I cannot provide you with the affidavit you request. First of all, I honestly don't remember the minute details of the events surrounding the program you proposed to WBTV. Secondly, everything I experienced while working on this program is a matter of record with the attorneys representing the Jefferson Standard Broadcasting Company. I gave a complete accounting of the case, as I knew it, at the time this first became an issue. It would be unwise of me to attempt to recall a particular detail of an incident that took place more than nine years ago, with the risk of contradicting a statement I made at that time. I'm sure you can appreciate this.

Thank you for the consideration of a check for my troubles. I am returning it with this letter.

I am glad to know that you are doing well. My best wishes for your continued success.

Cordially,

/s/ Sam
Samuel C. Zurich

att.
dc

APPENDIX H

(R 123-178)

(Attach. 11)

Philadelphia • New York • Chicago • Detroit
Boston • San Francisco • Hollywood • Honolulu

N. W. AYER & SON INC.

Rockefeller Center, 1271 Avenue of the Americas, New York City 20
Telephone Area Code 212, PLaza 7-5700

April 27, 1964

Miss Candis O. Ray
Candis O. Ray Agency
1500 Massachusetts Avenue, N.W.
Washington, D. C.

Dear Candis,

Your letter of April 23 surprises me. I thought we had covered this subject thoroughly enough to be understood.

It would be unwise of me to release any statement to you knowing that a statement is already registered with the Jefferson Standard Broadcasting Company. I indicated to you that there is no reference to a contract in that statement. Jefferson Standard preferred not to release this statement to you.

That brings us up to date. Since I have no need to obtain a notarized letter, I am returning your offer to pay the notary fee.

Cordially,

/s/ Sam
Samuel C. Zurich

APPENDIX I

(R 123-178)

FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

Address All Communications
to the Secretary

In Reply Refer to:
8422

Dec. 9, 1966

Mr. Sam Zurich
N. W. Ayer & Son, Inc.
1271 Avenue of the Americas
New York, New York 10020

Dear Mr. Zurich:

This is with further reference to the complaint failed against Station WBTV, Charlotte, North Carolina, by Miss Candis O. Ray, which arose out of her dealings with the station back in 1952 during which time you were the programming productions manager at WBTV.

On January 25, 1965, Miss Ray wrote to the Commission and alleged that WBTV had statements from their employees which WBTV had withheld from the Commission and which, she contends, would show that the licensee made untrue statements to the Commission in response to her 1960 petition to deny the renewal of license of Station WBTV. At the Commission's request, the licensee submitted a response specifically denying this allegation. Then, on March 19, 1965, Miss Ray wrote to the Commission enclosing copies of three letters which you had addressed to her on January 3, 1962, January 2, 1964 and April 27, 1964, which contain strong implications that you had given Station WBTV a written statement

of your dealings with Miss Ray. Pertinent quotations from these letters are as follows:

> ". . . everything I experienced while working on this program is a matter of record with the attorneys representing the Jefferson Standard Broadcasting Company. I gave a complete accounting of the case, as I knew it, at the time this first became an issue. It would be unwise of me to attempt to recall a particular detail of an incident that took place more than nine years ago, with the risk of contradicting a statement I made at that time. . . ."

> "When you phoned me about a year ago I told you I had made a complete accounting of this case, as I experienced it, immediately after it happened. I did this as an employee of WBTV and my statement is currently filed with them. It is accurate and will certainly serve to refresh my memory if required. I am sure you will understand, therefore, why it is impractical for me to supplement that statement at this time."

> "It would be unwise of me to release any statement to you knowing that a statement is already registered with the Jefferson Standard Broadcasting Company. I indicated to you that there is no reference to a contract in that statement. Jefferson Standard preferred not to release this statement to you."

You responded on April 2, 1965, that the statement referred to was an informal accounting of your experiences with Miss Ray's program, "Let's Cook Quick", given to Mr. Thomas Miller, attorney for WBTV, and Mr. Charles Crutchfield, station manager; that this informal accounting was given in Mr. Crutchfield's office in the presence of other members of the station's staff; and ". . . that there was no written statement provided by me or anyone else at this meeting. . . ."

By letter to the Commission dated September 9, 1966, Miss Ray contends that, in an attempt to acquire a copy

of the "statement" mentioned in your letters to her, she and Dr. Don Bilger visited you in New York City on January 27, 1964. She states further that on March 24, 1964, she called you about this matter and that you reported that:

> ". . . WBTV refused to send me a copy of my statement for you. They said you'd have to go through regular channels, however they read my statement to me on the telephone and there was no mention of contract in my statement."

By telephone on November 30, 1966, Mr. Rawson of the Commission's staff informed you of the allegations in Miss Ray's September 9, 1966 letter and asked for your comments. You then stated that the whole thing was a problem of semantics and that the use of the term "statement" in your letters referred to your oral presentation to Mr. Crutchfield and Mr. Miller and the notes that Mr. Miller was taking at that conference. Regarding the March 24, 1964 telephone conversation with Miss Ray, you stated that, after Miss Ray's January 27, 1964 visit, you did call Mr. Jorgenson of WBTV and later, possibly, Mr. Miller to obtain the "minutes" of what was said at the 1952 meeting in Mr. Crutchfield's office. It was our understanding that you stated that Mr. Jorgenson said they would not release to Miss Ray what was said at that meeting but that you reviewed with Mr. Jorgenson, and possibly Mr. Miller, what was said at the meeting and that you informed Miss Ray that you were given enough information to determine that there was no mention of any "contract" in what you had said at that time.

Miss Ray, in her latest complaint, asks the Commission to conduct a hearing on WBTV's pending application for renewal of license. In view of the clear indication of the existence of a written statement in your letters to Miss Ray and in her account of your March 24, 1964 telephone conversation with her, the Commission feels that further written clarification would be most helpful to a final

resolution of these questions. Accordingly, it is requested that you submit an affidavit explaining the strong and repeated indications in your letters to Miss Ray as to the existence of a written statement which you had submitted to WBTV and setting forth, to the best of your recollection, the details of your above-mentioned telephone conversation with Messrs. Jorgenson and Miller and with Miss Ray.

We appreciate your kind cooperation in this matter.

Very truly yours,

/s/ Ben F. Waple
Ben F. Waple
Secretary

cc: Miss Candis O. Ray
R. Russell Eagan, Esq.

APPENDIX J

(R 122 A)

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
January 26, 1967

In Reply Refer to:
8422

Candis O. Ray Agency
1545 - 18th Street, N. W.
Washington, D. C. 20036

Dear Miss Ray:

This refers to your complaint of September 9, 1966, and subsequent letters pertaining to this matter. You claim that the licensee, in response to your 1960 protest against its license renewal, failed to submit to the Commission certain written statements of its employees regarding the existence of a 1952 contract between you and WBTV for the production of a program, "Let's Cook Quick", and made misrepresentations to the Commission when it denied, in its letter of March 8, 1965, possession of such written statements. You ask the Commission not to grant WBTV's renewal application and request that we require WBTV to ". . . submit all statements it has in its file concerning the contract negotiations and the production of the 'Let's Cook Quick' shows which were filed with Jefferson Standard Broadcasting Company. . . ."

We note that much of the material you submitted with your latest complaint again raises the question of whether you had a contract with the licensee of WBTV in 1952. That matter has been unsuccessfully litigated by you in the North Carolina Courts and cannot be part of our consideration of your current complaint. We are now only considering the question of whether or not principals of WBTV lacked candor in denying the existence of written statements furnished by station employees other

than those submitted with its response to your 1960 protest of its renewal application.

A background of this matter follows. On January 25, 1965, you charged that WBTV had in its possession written statements from its staff members which would show that the licensee made "untrue statements" to the Commission in its March 9, 1961 response to your December 8, 1960 protest of its license renewal. Pursuant to our usual practice, WBTV was asked to submit its comments on these charges. By letter dated March 8, 1965, WBTV denied that it had any such written statements except for two affidavits which had previously been submitted and one "personally typed, undated and unsigned, statement" by a former staff member, a copy of which the licensee then enclosed. A copy of WBTV's March 8, 1965 letter was furnished to you on March 12, 1965.

Again, on March 19, 1965, you wrote the Commission and enclosed copies of letters addressed to you on January 3, 1962, February 2, 1964 and March 27, 1964 by Mr. Samuel C. Zurich, a former employee of WBTV, which you contend showed that when WBTV denied the existence of such statements it willfully misrepresented itself to the Commission. In these letters, Mr. Zurich states, in part, as follows:

> ". . . everything I experienced while working on this program is a matter of record. . . ."
>
> ". . . my statement is currently filed with them. It is accurate and will certainly serve to refresh my memory. . . ."
>
> "It would be unwise of me to release any statement to you knowing that a statement is already registered with Jefferson Standard Broadcasting Company. I indicated to you that there is no reference to a contract in that statement. Jefferson Standard preferred not to release this statement to you."

Because these phrases would, to any reasonable reader, strongly suggest that contrary to the station's earlier denial, Zurich had given a written statement to WBTV, the Commission wrote Mr. Zurich on March 29, 1965, asking him the following:

"(1) Whether your statement was in writing and the date.

(2) The name of the individual to whom you gave the statement.

(3) The substance of the statement.

(4) Any other voluntary information pertinent to Miss Ray's experience with the licensee."

He responded on April 2, 1965, denying that he had ever given a written statement to the station. He explained that the statement to which he referred in his letters to you was an "informal accounting" of his experience with the "Let's Cook Quick" program which he gave orally, to the station manager, Mr. Charles Crutchfield, and Mr. Thomas Miller, attorney for WBTV. He stated, further, that there was no written statement provided by him or anyone else at this meeting.

Having received from you copies of your March 19, 1965 letter to the Commission, together with the aforementioned Zurich letters, WBTV in response thereto submitted letters from Mr. Crutchfield, President of the licensee, and F. A. McCleneghan, the station's North Carolina counsel. These letters again denied the possession by WBTV of such written statement of Zurich, or other employees. Copies of all of this material were furnished to you on April 26, 1965, and in response thereto you stated that you would file a protest against a grant of WBTV's renewal application in 1966 ". . . citing the newly discovered evidence . . ." in your possession.

Turning now to your current complaint against WBTV's pending renewal application, it is noted that again you contend that the licensee made misrepresentations to the Commission in denying possession of written statements. You urge that new evidence together with the Zurich letters substantiate your charge. Your new evidence consists of the following statement which you claim Mr. Zurich made to you in a telephone conversation on March 24, 1964:

> "WBTV refused to send me a copy of my statement to you. They said you'd have to go through regular channels, however, they read my statement to me on the telephone and there was no mention of contract in my statement."

In again reviewing this entire matter it appeared that Mr. Zurich's prior statements to you were inconsistent with his letter to the Commission of April 2, 1965, in which he denied that he had ever given WBTV a written statement. On the basis of our further analysis, we agree that from a reading of the Zurich letters and what you characterized as new evidence, you were justified in believing that WBTV had in its possession a written statement of Zurich. Accordingly, a second letter was sent to Mr. Zurich on December 9, 1966, asking him to explain his strong and repeated indications in his letters to you as to the existence of a written statement and to set forth to the best of his recollection the details of the telephone conversations he had with Mr. Jorgenson and you in the early part of 1964. Copies of your current filings were also submitted to WBTV.

We now have a response from Mr. Zurich, dated December 14, 1966, an additional statement from WBTV, dated December 24, 1966 (copies of which have been furnished you) and your reply thereto dated January 6, 1967. In his latest letter, Zurich again denies that he gave WBTV a written statement—stating that all references which he made to "a statement" in his correspond-

ence with you were in connection with his oral and informal account of his experience with you and your program, which he gave to Mr. Crutchfield and Mr. Miller. He also denies your allegations that he informed you by telephone on March 24, 1964 that WBTV read his statement to him over the telephone. Rather, he states that he merely informed you of his telephone conversation with Mr. Jorgenson during which they reviewed ". . . the part of the meeting in Mr. Crutchfield's office which related to my involvement in this case."

WBTV, in its statement, made it clear that it did interview a number of station personnel in connection with the "Let's Cook Quick" program and that during the interview their attorney, Mr. Miller, did take notes of the interviews in connection with the then pending litigation of your suit against WBTV for breach of contract. They emphasized, however, that, while Mr. Zurich was interviewed, no written notes were made of his interview. Additionally, they state that the notes of the other interviews taken by Mr. Miller were neither converted to a written statement nor shown for the purpose of accuracy to those interviewed and were therefore not regarded by the station or its counsel as "statements", as that term is commonly understood by lawyers.

In your letter of January 6, 1967, you question WBTV's assertion that Mr. Miller did take notes at the meeting in question, but not as to what was said by Mr. Zurich. You contend that this is at variance with Mr. Zurich's admission that notes were taken during this meeting. We do not see any conflict in these statements. Since Mr. Miller was taking notes at the meeting, Mr. Zurich, at the time of his correspondence with you, obviously assumed that his oral presentation would be to some degree reflected in these notes. Presumably, Mr. Miller, an attorney preparing for trial, made notes when

the individual being interviewed said something that was deemed relevant to the case. Apparently he did not believe that the information given by Mr. Zurich would be useful for that purpose.

In support of your contention that these "notes" were reduced to writing in the form of a "statement", you refer to Mr. Zurich's previous reference to his statement as "being currently filed" with WBTV. However, his references to his statement as being "currently filed" or "registered" were made in letters to you which he wrote at a time when (as we point out above) he obviously believed that what he said would be reflected in Mr. Miller's notes. He has since repeatedly stated that he never saw any written account of his oral presentation. You, of course, have no direct knowledge as to the existence of such a written account. Persons who might have known of such a written statement (Messrs. Crutchfield, Jorgenson, McCleneghan and Miller) have now denied any such knowledge. In these circumstances we conclude that no substantial question exists as to whether WBTV made misrepresentations in denying that it had anything which it classified as statements taken from its employees in regard to your dispute with the licensee of the station.

You further submit that these general "notes" taken during the interviews, which admittedly exist, do represent Mr. Zurich's and other staff members' "statements" and you ask: (1) Whether WBTV has the right to "conceal" these notes from the FCC, in connection with your pending complaint? and (2) Whether WBTV had the right to withhold these "notes" when it responded to your 1960 protest of its renewal application?

First of all, WBTV has not "concealed" these "notes" from the Commission. They never denied the existence of these notes. They merely did not regard these notes

—which were neither signed by, nor shown to, the persons interviewed—as "written statements" in the legal or ordinary sense of the term. Moreover, as is noted above, the only question properly raised by your present complaint is whether WBTV was guilty of misrepresentation in denying possession of a written statement by Mr. Zurich. Thus, even if we assume (and we have no reason to so believe) that Mr. Zurich did say something relevant to your dispute with WBTV and it was in these notes, it would only bear on whether a contract existed and not on the issue of alleged misrepresentation.

With regard to your second question, WBTV in responding to your 1960 protest of its renewal application certainly was not obligated to furnish the Commission with these notes. These notes are the work product of their attorney concerning a matter not directly related to the Commission's business, and the withholding of them in 1961, or even now, is not regarded by the Commission as evidence of bad faith.

On the basis of all the information which we have obtained, we see no evidence which indicates that WBTV misrepresented the facts to the Commission when it denied that it had written statements from employees other than those which had been previously furnished. In denying the existence of written statements, it is now obvious that WBTV did not consider as "statements" the notes its counsel had taken of oral interviews of employees because, as would be the case of "statements" in the technical legal sense, the interviews were not reduced to narrative form and submitted to the interviewees for their correction and signature.

It is indeed unfortunate that you have been put to so much trouble which appears, from the explanations of WBTV's management, its counsel, and Mr. Zurich, to have resulted from lack of clarity in Mr. Zurich's letters to you. While we have felt that these letters did appear

to indicate the existence of written statements, we now feel that the matter has been satisfactorily explained. This conclusion was reached only after a careful study and review of all the material furnished by you since January, 1965, including your latest filing on January 20, 1967.

In view of the foregoing, we see no reason to further delay our action on WBTV's renewal application. Accordingly, upon a finding that the public interest, convenience and necessity will be served, we have this day renewed WBTV's license for a regular term.

Very truly yours,

(signed)

Ben F. Waple
Secretary

cc:

WBTV
Russel R. Eagan, Esq.

APPENDIX K

(R 304)

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

FCC 67-1173
6584

File No. BRCT-55

In re Application of
JEFFERSON STANDARD BROADCASTING COMPANY
Charlotte, North Carolina

For Renewal of License of Station WBTV

ORDER

Adopted: October 25, 1967 Released: October 27, 1967
By the Commission: Commissioner Bartley absent.

1. The Commission has before it an application filed on June 26, 1967 by Candis O. Ray requesting a review of the actions taken by the Chief of the Broadcast Bureau on January 26, 1967 which granted the above-entitled application and on May 23, 1967 which denied Miss Ray's petition requesting reconsideration of that grant.

2. IT IS ORDERED, That, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS
COMMISSION

Ben F. Waple
Secretary

APPENDIX I.

(R 230)

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

File No. BRCT-55

In re Application of
JEFFERSON STANDARD BROADCASTING COMPANY

For Renewal of License of Station WBTV
Charlotte, North Carolina

MEMORANDUM OPINION AND ORDER

Adopted: May 23, 1967 Released: May 25, 1967

1. We have before us: (a) the above application which was granted on January 26, 1967 by delegated authority under Section 0.281 of the Commission's Rules; (b) a Petition for Reconsideration and Recision of that grant filed by Miss [Candice] O. Ray on February 27, 1967 and responsive pleadings thereto.

2. Without reaching the question of Petitioner's standing we have thoroughly reviewed the merits of Petitioner's claims.

3. In 1952 Petitioner was involved in a private contractual dispute with WBTV regarding the production by her of a television program entitled "Let's Cook Quick". During the period 1953 through 1957 Petitioner unsuccessfully litigated this matter in the North Carolina courts. Thereafter, in December 1960, she filed a protest against WBTV's license renewal in which she attempted to show that the licensee's actions in connection with the 1952 contractual dispute and the subsequent

lawsuits reflected adversely on its character qualifications. Licensee filed a response on March 9, 1961. By letter dated May 17, 1961, we denied Petitioner's request for a hearing and granted WBTV's renewal application —concluding that her complaint was a private controversy which had been litigated in the courts of North Carolina.

4. Subsequently, in letters to the Commission in early 1965 and again in complaints she filed in September 1966 against WBTV's renewal application, Petitioner attempted to establish that the licensee made misrepresentations to the Commission in its response to her protest against WBTV's 1960 renewal application. She has alleged that, in connection with her lawsuits against the station, the licensee required its employees to submit written statements of their personal dealings with her. She contended that these statements would show that a contract existed between her and the station in 1952, a point which the licensee denied in is response to her 1960 protest. In support of her allegations Petitioner has submitted copies of letters addressed to her in 1952 and 1964 by Mr. Samuel C. Zurich, a former employee of WBTV.

5. The licensee, in letters to the Commission, has repeatedly and emphatically denied that it possesses such written statements of its employees. Moreover, Mr. Zurich has explained to the Commission in letters dated April 2, 1965 and December 14, 1966, that he did not give a written statement to WBTV and that the "statement" to which he referred in his letters to Petitioner was an informal and oral accounting of his experience with Petitioner which he gave to an officer of the licensee and its counsel.

6. By letter dated January 26, 1967 we informed Petitioner that on the basis of all of the information before us we saw no evidence that WBTV had misrepre-

sented facts to the Commission. Accordingly, WBTV's renewal was granted for a regular term on that same day by Broadcast Bureau action.

7. The Petition for Reconsideration contains, in substance, the same information presented to the Commission in early 1965 and again in September 1966. Essentially, the Petitioner attempts to establish (1) the existence of a contract between her and WBTV in 1952 and (2) that WBTV misrepresented to the Commission when it denied the possession of a written statement of its former employee, Mr. Samuel C. Zurich. The question of contract, as this Commission has pointed out to Petitioner on several previous occasions, is a private dispute over which the Commission has no regulatory jurisdiction. Petitioner's presentation on the question of misrepresentation adds nothing of substance that has not already been the subject of our careful consideration. In short, Petitioner has submitted no new information which would warrant a recision of our grant of WBTV's renewal.

8. ACCORDINGLY, IT IS ORDERED, That pursuant to authority delegated to the Chief, Broadcast Bureau in Section 1.106(a) of the Rules, that the grant of the above-captioned renewal application on January 26, 1967 IS AFFIRMED, and the Petition requesting recision of that action IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

(signed)

Ben F. Waple
Secretary

APPENDIX M

(SR 253)

FEDERAL COMMUNICATIONS COMMISSION

[FCC Emblem]

7853
PUBLIC NOTICE—B
October 25, 1967

Washington, D. C. 20554
Report No. 6761

BROADCAST ACTIONS

The Commission took the following actions on October 25: (Commissioners Hyde (Chairman), Lee, Cox, Loevinger, Wadsworth and Johnson).

• • • • •

(SR 252)

APPLICATION FOR REVIEW OF LICENSE RENEWAL OF TV STATION WBTV, CHARLOTTE, NORTH CAROLINA, DENIED. The Commission has denied the application of Miss Candis O. Ray for review of the Broadcast Bureau's January 27 grant of the license renewal application (BRCT-55) of Jefferson Standard Broadcasting Company for its television station WBTV, Charlotte, North Carolina, and of the Broadcast Bureau's Memorandum Opinion and Order released May 25 denying Miss Ray's petition for reconsideration of the renewal grant. Miss Ray had requested that the WBTV renewal application be designated for hearing. Her request is based on a breach of contract dispute with WBTV. (By Order.)

—FCC—

APPENDIX N

(SR 251)

FEDERAL COMMUNICATIONS COMMISSION

[FCC Emblem]

9246
PUBLIC NOTICE
December 1, 1967

Washington, D. C. 20554
Report No. 6846

BROADCAST ACTIONS

• • • •

(SR 250)

CORRECTION

In Broadcast Actions, Report No. 6761, October 25, 1967, Mimeo No. 7853, Page 2.

APPLICATION FOR REVIEW OF LICENSE RENEWAL OF TV STATION WBTV, CHARLOTTE, NORTH CAROLINA, DENIED. The Commission has denied the application of Miss Candis O. Ray for review of the Broadcast Bureau's January 27 grant of the license renewal application (BRCT-55) of Jefferson Standard Broadcasting Company for its television station WBTV, Charlotte, North Carolina, and of the Broadcast Bureau's Memorandum Opinion and Order released May 25 denying Miss Ray's petition for reconsideration of the renewal grant. Miss Ray had requested that the WBTV renewal application be designated for hearing. Her request is grounded on her allegations that the licensee, in response to her earlier complaints in connection with an alleged 1952 breach of contract, made misrepresentations and withheld from the Commission certain relevant material. (By Order.)

—FCC—

APPENDIX C

(SR 231-233)

February 12, 1968

BRCT-55
Licensee WBTV
Charlotte, N. C.

The Honorable Rosel H. Hyde
Chairman, Federal Communications
Commission
1919 M Street, N. W.
Washington, D. C.

Dear Mr. Chairman:

In further reference to my correspondence to you dated January 23, 1968 re above captioned matter.

The original order issued was based upon a staff recommendation of breach of contract which is not the true charge issue. "Misrepresentation" by licensee WBTV to the Commission is the charge of my complaint, and as noted by action of the FCC in accord by its ordered change of charge issue on the public notice. Whether or not a contract *ever existed* is not the concern here in this complaint before the Commission nor would a simple breach of contract come under the jurisdiction of this federal agency.

In light of the variance in FCC ruling of material factor of charge issue, brought about by erroneous recommendations of staff to the Commissioners, necessitating the change on the Public Notice "By Order" of FCC, and in light of the fact that the key witness, Samuel Zurich, has repeatedly stated to me that his reports to me and to the FCC *do not conflict* concerning his statement being on file with WBTV, and in light of the fact that Mr. Zurich stated to me again over the telephone on recent date of September 11, 1967 (see my attached affidavit)

that his above mentioned reports to me in his letters of January 3, 1962, January 2, 1964 and April 27, 1964 (copies hereto attached) contain the truth and that he has not contradicted himself in his reports to me and to the FCC concerning his statement being on file with WBTV, it is imperative that the Commission contact Zurich for a clarification of what he means by his statements of reports to me and to the FCC as "Not conflicting". It is clear that Mr. Zurich will clarify what he means by his reports to me and to the FCC as not conflicting if it is required by FCC that he make clear what he means.

Zurich verifies again the truth of the statements in his letters to me of above dates with his letter dated October 16, 1967 in which he states that (see copy attached) "There isn't anything I can tell you that I haven't already said" and "To say anything more on the matter would be superfluous". This letter dated October 16, 1967, above mentioned has not been filed with the FCC, having received it after Petition directed to the attention of the Commissioners had already been filed.

The Commission had previously requested that Zurich send an affidavit, but Zurich refused the Commission this demand. Since Zurich is a close friend of the licensee WBTV, and a hostile witness, in the public interest the Commission should, under its regulations, avail itself of all avenues to obtain verified statements in any instance wherein the same is the crux of a matter and affects your Commissioners' determinations.

Zurich states to the FCC that his referred-to statement on file with WBTV was the "notes" which he saw Mr. Miller taking down when he gave his "oral" statement to WBTV. I believe that. I have never stated that Mr. Zurich signed his statement which is on file with WBTV, as WBTV in its answer to the Commission implied that I meant. Mr. Zurich reported to me in his letters hereto-

fore mentioned that his statement was on file with WBTV and "Would certainly serve to refresh my memory, if so required". I know no more than what Zurich reports. Mr. Zurich knows exactly what happened. Conflicting reports are made to FCC by Zurich and the station WBTV.

Licensee WBTV swears under oath and filed with the Commission in its answer that no notes whatsoever were taken on what Mr. Zurich said in the referred to meeting in Mr. Crutchfield's office at which time other WBTV personnel were present and were required to give reports of their personal experience in the matter. WBTV states to the Commission they have notes but they "are our working papers", and they refuse to reveal these minutes of what transpired in that meeting.

Aside from the matter of jurisdiction by this agency, I want to clear up a misleading point made by WBTV in its answer, for fear that it might influence adversely. WBTV reported to the Commission that my initial law suit was adjudicated in three different law suits in North Carolina. The fact of the matter which is a matter of court record now reveals that the first suit was brought in Charlotte, N. C., the home of WBTV, the second was merely an amendment, and the third and last, if one wants to call it a third suit in the same matter was brought in my home town, Lenoir, North Carolina, sixty miles northeast of Charlotte. The reason for change of venue is that I had been denied a jury trial and verdict in Charlotte. The jury was picked, but the local judge would not allow the jury to give a verdict, there was only one more court appearance on the case which was my home town mentioned above, Lenoir, at which time the case was adjudged prior ruling prevaling on motion of res adjudicado by motion of WBTV attorneys. The suit was not taken to the state Supreme court; I did not appeal on advice of counsel that I would not get a fair trial in the state Supreme Court because of the political

influence of Jefferson Standard Life Insurance Company, owning the powerful station WBTV, within the state, and thereby I was forced to drop the legal proceedings within the state.

My complaint against licensee WBTV before the Federal Communications Commission is not the cause of the initial lawsuit in North Carolina, but clearly defined MISREPRESENTATION by licensee WBTV, as was my charge when I first contacted the Commission on the matter in the public interest of the community wherein WBTV, an informative and influencing entity, exists.

I am herewith submitting my sworn affidavit as to statements both written and verbal as made to me by Samuel Zurich concerning his statement being on file with WBTV, Charlotte, North Carolina.

Respectfully submitted,

/s/ Candis O. Ray
CANDIS O. RAY

(Attach.)

AFFIDAVIT

I, Candis O. Ray, being first duly sworn, deposes and states as follows:

1. That on date September 11, 1967 I talked on the long distance telephone with Samuel Zurich who was at the telephone number Plaza 7-5700 in New York City. My records substantiate the same.
2. That Mr. Zurich stated to me at that time during the same telephone conversation that his reports in his letters to me of dates January 3, 1962, January 3, 1964 and April 27, 1964 concerning his statement being on file with WBTV are absolutely accurate, and that he has not contradicted himself in his reports to me in the above mentioned

letters and in his reports to the FCC (see FCC letter to Zurich dated December 9, 1966 re Zurich's telephone conversations with FCC's Mr. Robert Rawson; Zurich's subsequent answer to FCC re same dated December 14, 1966. Also, Zurich's letter dated April 2, 1965 addressed to FCC.)

3. I have never stated that Mr. Zurich's statement which he has reported is on file with WBTV is in the form of a signed document as an affidavit.

4. Mr. Zurich reports to FCC that his reference to his statement on file with WBTV which would "refresh" his memory "if so required" were the notes which Mr. Miller, WBTV attorney, was taking down on what he said when he gave his statement "orally" in the referred-to conference in Mr. Crutchfield's Office.

5. WBTV has filed a sworn statement with the FCC that no notes were taken on what Mr. Zurich said during that referred-to conference in Mr. Crutchfield's office.

6. Mr. Zurich firmly contends to affiant that his letters of above mentioned dates to her contain the the truth, and that his statements to her and to the FCC do not conflict.

Further affiant saith naught.

/s/ Candis O. Ray
CANDIS O. RAY

Sworn to and subscribed before me this 12th day of February, 1968.

(Signed) SANDRA O. OLSON
Notary Public DC
My Commission expires:
April 14, 1971

APPENDIX P

(R 484)

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

December 4, 1969

8427-B

Miss Candis O. Ray
2700 Connecticut Avenue, N. W.
Washington, D. C. 20008

Dear Miss Ray:

This refers to your complaint against Station WBTV, Charlotte, North Carolina dated November 24, 1969. In your complaint you repeat charges that the licensee made misrepresentations to the Commission and maintain that the Commission and the Broadcast Bureau committed two basic errors in its previous handling of the matter.

The first error made by the Commission according to your complaint is that it issued "Two distinct contradictory opinions and rulings 'By Order' of F.C.C. . . .", when, in fact, there was but one Order dated October 25, 1967. Apparently, you are confusing the Order with the subsequent public notices. The second public notice regarding the Order merely corrected the first notice and neither of them was an Order. Thus, your statement that the Commission has issued "contradictory opinions" is without foundation.

The second, alleged error committed by the Commission was that it considered the contractual dispute and not the allegations of deliberate misrepresentations. In numerous letters from the Commission, you have been advised that this Commission, as a matter of policy, does not exercise jurisdiction in questions of contractual right

and or private controversy. Consideration has been given to your allegations of deliberate misrepresentations by the licensee as stated in the Memorandum Opinion and Order of May 25, 1967, the Order of October 27, 1967 and in numerous letters since 1959.

In your complaint you present no material that has not been previously considered. A complete review of all aspects of your allegations has been made, and it has been determined that a grant of the application for renewal of license of Station WBTV would serve the public interest, convenience and necessity.

In view of the foregoing and pursuant to Section 0.281 (aa) of the Commission's Rules, your "complaint/petition" is dismissed as repetitious.

Sincerely yours,

George S. Smith
Chief, Broadcast Bureau

cc:

Station WBTV
Joseph Chachkin—General Counsel's Office

APPENDIX Q

(R 527)

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 70-149
43304

File No. BRCT-55

In re Application of
JEFFERSON STANDARD BROADCASTING COMPANY
Charlotte, North Carolina

For Renewal of License of Station WBTV

MEMORANDUM OPINION AND ORDER

Adopted: February 11, 1970 Released: February 16, 1970 By the Commission:

1. On December 22, 1969, Miss Candis O. Ray filed an Application for Review directed against the actions of the Chief, Broadcast Bureau, in granting the above-entitled application and dismissing her complaint of November 24, 1969 as repetitious. This application for review is opposed by Jefferson Standard Broadcasting Company. The Commission has considered Miss Ray's allegations against this licensee for the past four renewal periods.

2. This controversy between Miss Ray and the licensee has been in existence for almost two decades. Her allegation that the licensee misrepresented material facts to the Commission has previously been thoroughly reviewed by the Commission, as evidenced by our numerous letters to Miss Ray and our Order of October 27, 1967. The

presentation in the Application for Review on the question of misrepresentation adds nothing of substance that has not already been the subject of our careful consideration. We could thus simply state that we adhere to our prior determination on the matter, and for the reasons previously stated. There is, however, a further point. Since this matter has been considered before, Miss Ray is essentially asking for a reconsideration of the Order which became final in 1967. There is clearly a need for administrative finality. Indeed, we believe that the Commission is precluded from the consideration of the matter by the thrust of Section 405 of the Communications Act of 1934, as amended. *Newforte, Incorporated*, 1 FCC 2d 949 (1965).

3. In view of the foregoing, the Chief, Broadcast Bureau, acted properly in dismissing Miss Ray's complaint.

4. Accordingly, IT IS ORDERED, That the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Secretary

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

CANDIS O. RAY, PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION, RESPONDENT

PETITION FOR REVIEW

Candis O. Ray hereby petitions the court for review of the Order released by the Federal Communications Commission on February 16, 1970 which Order was issued under delegated authority, pursuant to Federal Communications Commission procedure under Section 405 I F.C.C. 2nd 949 (1965), whereas the Petition For Reconsideration filed by Petitioner on date December 19, 1969 was properly filed by Petitioner under Section 155(d), (1), (3). Title 47, United States Code Annotated, which does not permit the Federal Communications Commission to delegate this authority.

Also, the aforesaid Order did not take cognizance of conflicting statements on file with the Federal Communications Commission, but did consider matters not in issue in this Petition; as such, Petitioner is entitled to a hearing.

/s/ Candis O. Ray

Petitioner
Pro se
2700 Connecticut Avenue, N.W.
Washington, D. C. 20008
483-9495
223-1113

March 17, 1970

APPENDIX S

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[no opinion]

SEPTEMBER TERM, 1970

No. 24,027

[Filed Nov. 10, 1970, United States Court of Appeals for the District of Columbia Circuit, /s/ Nathan J. Paulson, Clerk.]

CANDIS O. RAY, APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA, APPELLEES
JEFFERSON STANDARD BROADCASTING COMPANY, INTERVENOR

Appeal from the Federal Communications Commission

Before: Wright and Robb, Circuit Judges, and Matthews, Senior District Judge, U. S. District Court for the District of Columbia.*

JUDGMENT

This cause came on to be heard on the record from the Federal Communications Commission, and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c). On consideration of the foregoing, it is

ORDERED AND ADJUDGED by this Court that the order of the Federal Communications Commission appealed from herein is hereby affirmed.

Per Curiam
For the Court:
Nathan J. Paulson
Clerk

Dated: November 10, 1970.

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* Sitting by designation pursuant to 28 U.S.C. § 294(c).

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1108

CANDIS O. RAY, T/A CANDIS O. RAY AGENCY,
PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

Petitioner, Candis O. Ray, seeks review of a judgment of the court of appeals (Pet. App. S) which affirmed without opinion the Federal Communications Commission's dismissal of her complaint against television station WBTV (Pet. App. Q).[1]

As the Commission indicated in its Memorandum Opinion and Order (Pet. App. Q) this controversy

[1] By order of May 27, 1970, the court of appeals amended the petition for review filed under 47 U.S.C. 402(a) to a notice of appeal under 47 U.S.C. 402(b) and deleted the United States as a party respondent.

413-855—71

has a long history. It began in 1952 when WBTV allegedly broke a contract with Miss Ray involving the production of a television program. After she had unsuccessfully litigated the matter in North Carolina courts, petitioner filed a complaint with the Commission on December 8, 1960. On May 17, 1961, the Commission renewed the station's license, noting that affidavits submitted by the licensee categorically denied petitioner's allegations and that the Commission has traditionally taken the position that private contractual disputes should be resolved judicially (Pet. App. A).

Miss Ray renewed her complaint on July 15, 1961, and March 5, 1962, asking the Commission "to examine the false statements sworn under oath by the licensee, its attorney and the others submitting affidavits" and to report its findings to the Justice Department. Thereafter, on November 29, 1963, WBTV's license was renewed. Miss Ray initiated a new series of complaints on January 25, 1965, when she wrote to the Commission that WBTV had "withheld" statements by its employees in responding to her 1960 complaint. The Commission's staff investigated these complaints and concluded on the basis of all the available information that WBTV had not concealed any facts from the Commission (Pet. App. J). By order released October 27, 1967, the Commission denied an application to review the staff's action renewing WBTV's license (Pet. App. K). That order was never appealed.

Miss Ray renewed her complaint in 1969 when WBTV sought renewal of its license. By Memorandum Opinion and Order released February 16, 1970 (Pet. App. Q), the Commission dismissed Miss Ray's complaint because her most recent pleading added "nothing of substance that has not already been the subject of our careful consideration." The Commission concluded that a need existed for administrative finality, and further observed that Section 405 of the Communications Act, 47 U.S.C. 405, precluded further consideration of her complaint.[2]

After full briefing and oral argument the court of appeals affirmed the Commission's order, noting that "while the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. See Local Rule 13(c)." Local Rule 13(c) of the United States Court of Appeals for the District of Columbia Circuit provides that:

> In accordance with recommendations for improvement of judicial administration, this court may, while according full consideration of the issues, dispense with opinions where the issues occasion no need therefor, and confine its action to such abbreviated disposition as it may deem appropriate, *e.g.*, affirmance by order of a decision or judgment of a court or administrative agency; a judgment, or affirmance or reversal, containing a notation of precedents, or accompanied by a brief memorandum. [Footnote omitted.]

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[2] Section 405 provides in part that "[a] petition for rehearing must be filed within 30 days from the date upon which public notice is given of the order * * * complained of."

Under the circumstances of this case, petitioner's objection to the use of that procedure is without merit.

The petition for certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

RICHARD E. WILEY,
General Counsel,
Federal Communication Commission.

JANUARY 1971.

U.S. GOVERNMENT PRINTING OFFICE : 1970